

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NSF INTERNATIONAL,
a Michigan Nonprofit Corporation

Plaintiff,

CASE NO. 4:16-cv-11148

v.

HON TERRENCE G. BERG

NEWAGE CASTING, LP,
a Texas Limited Partnership

Defendants.

AGREED PRELIMINARY INJUNCTION ORDER

Plaintiff, NSF International (“NSF”) having filed its application for an order to show cause as to why a preliminary injunction should not issue (Dkt. 9), brought pursuant to Fed. R. Civ. P. 65, for the reason that Defendant, NewAge Casting, LP (“NewAge” or “Defendant”), is marketing, advertising, offering for sale and/or selling goods and products bearing counterfeit reproductions of NSF’s federally registered certification marks, as set forth in NSF’s First Amended Verified Complaint, and NSF and NewAge having reached agreement with regard to a Preliminary Injunction Order, the parties agree and recite as follows:

- A. NSF is likely to succeed in showing that Defendant has breached its contract with NSF;
- B. NSF International is likely to succeed in showing that Defendant has infringed one or more of NSF International’s federally registered certification marks, U.S. Registration Nos. 1884385, 1884384 and 2018630 (the “NSF MARKS”) in connection with the marketing, advertising, offering for sale and/or sale of goods and products;

- C. Defendant's infringement of the NSF MARKS will result in immediate and irreparable harm to NSF International if the requested relief is not ordered;
- D. The harm to Plaintiff from denial of the requested order outweighs the harm to Defendant's legitimate interests against granting such an order;
- E. Contemporaneous with the filing of this order, New Age Casting, LP has notified its sales representatives and advertisers that neither it nor its products are NSF certified. The sales representatives and advertisers have been instructed not to indicate or suggest that the products of New Age Casting, LP are NSF certified;
- F. NewAge also has agreed to modify its website to make it clear that its products are not NSF certified. NewAge shall insure that its website makes clear that neither NewAge nor its products are NSF certified;
- G. NewAge shall immediately notify NSF should it learn that any sales representatives or advertisers are improperly promoting NewAge products as NSF certified, shall take prompt steps to stop the improper promotion, and otherwise shall be subject to the consequences of violating this Preliminary Injunction Order.

NewAge and NSF hereby enter into and agree to the following:

- 1. Defendant, NewAge Casting, LP its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation therewith, are enjoined and restrained from:
 - a. Utilizing any advertising or promotional material referencing any of the NSF MARKS or otherwise claiming NSF certification in connection with its business or operations;
 - b. Utilizing any of the NSF MARKS or claiming NSF certification in connection with the offering or sale of any of Defendant's products;

- c. Utilizing any designation which is confusingly similar to any of the NSF MARKS or that is likely to create the impression that Defendant's business or services are associated with NSF International or are endorsed, authorized, sponsored or certified by NSF International;
 - d. Advertising or representing, directly or indirectly, that Defendant has the right to utilize any of the NSF MARKS or to claim NSF certification; and
 - e. Engaging in unfair competition by infringing or misappropriating any of the NSF MARKS or otherwise claiming NSF certification.
2. This Order shall remain in effect until a determination on the motion for a permanent injunction, settlement between the parties or as otherwise ordered by the Court.

IT IS SO ORDERED.

Dated: April 27, 2016

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

SEEN AND AGREED TO:

s/ Patrick M. McCarthy
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Certificate of Service

I hereby certify that this Order was electronically submitted on April 27, 2016, using the CM/ECF system, which will send notification to all parties.

s/A. Chubb

Case Manager